

RESOLUTION NO. 90-34

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A RESOLUTION OF THE LODI CITY COUNCIL  
APPROVING THE CITY OF LODI PERSONNEL BOARD OF REVIEW  
ADMINISTRATIVE HEARING PROCEDURES

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RESOLVED BY THE LODI CITY COUNCIL, that the City of Lodi Personnel Board of Review Administrative Hearing Procedures dated March 7, 1990 are hereby approved.

Dated: March 7, 1990

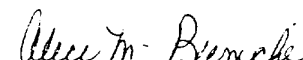
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I hereby certify that Resolution No. 90-34 was passed and adopted by the Lodi City Council in a regular meeting held March 7, 1990 by the following vote:

Ayes: Council Members - Hinchman, Olson, Pinkerton, Reid and Snider (Mayor)

Noes: Council Members - None

Absent: Council Members - None

  
Alice M. Reimche  
City Clerk

*Attchd Exhibit A*

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CITY OF LODI

PERSONNEL BOARD OF REVIEW

ADMINISTRATIVE HEARING PROCEDURES

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SECTION 1. DEFINITIONS.

For purposes of this policy, the following words shall be defined as stated, unless the context or subject matter otherwise requires:

- a) "Board" shall mean the Personnel Board of Review of the City of Lodi.
- b) "City" shall mean the City of Lodi, or the party or parties representing the City of Lodi in any proceeding before the Personnel Board of Review.
- c) "Day" or "Days" shall mean calendar days.
- d) "Party" includes the City, and any person, other than an officer or employee of the City in his or her official capacity, who has been allowed to appear or participate in the proceedings.
- e) "Adjudicatory hearing" means a hearing by the Board involving rights claimed by an employee or former employee of the City, arising out of the employee/employer relationship as it pertains to the individual; provided that the procedures governing such hearing shall include but not be limited to all of the following:
  - 1. Testimony under oath
  - 2. The right to cross examine and confront adversary witnesses
  - 3. The right to representation
  - 4. The issuance of a formal decision

For purposes of this subdivision, an "adjudicatory hearing" shall not include any informal fact finding or investigatory hearing. Nothing in this part is intended to grant any person a right to a hearing not otherwise guaranteed by memorandum of understanding or ordinance.

## Section 2. INITIATION OF PROCEEDINGS.

A. Initiation of proceedings in front of the Personnel Board of Review may be commenced by any party entitled to such adjudicatory hearing by memorandum of understanding, ordinance, or agreement of the City and other party, upon the filing of a request for such hearing. The request shall be in writing, but need not be in any specific format. It should include a clear statement of the nature of the request, the persons involved, and other relevant facts. Such request may be filed by the aggrieved party, or that party's duly authorized representative.

B. Such request for a hearing shall be filed with the City Clerk of the City of Lodi, within the time period specified by memoranda of understanding, ordinance, or if otherwise unspecified, within fifteen (15) days after the final action by the City which the party wishes the Board to consider.

## Section 3. SERVICE OF NOTICE.

A request for adjudicatory hearing shall be filed with the City Clerk, who shall promptly forward copies to the City Manager, Director of Personnel, and department head or department heads under which the employee or former employee served. Such filing shall be by first class mail, or by personal service.

#### Section 4. ACKNOWLEDGEMENT.

Within ten (10) days after the receipt of notice of a request for hearing, a date shall be determined for the hearing of such matter. Such date shall not be less than ten (10) days nor more than sixty (60) days following receipt of the request for hearing. The acknowledgment shall be mailed to the applicant within three (3) days after a hearing date is determined, and shall contain the date, time and location for such hearing. It shall advise the applicant of the right to have witnesses subpoenaed, to confront and cross examine witnesses, to have a written decision, to discovery of information concerning action taken against the applicant, and of the right to have the hearing postponed for good cause. The time periods specified in this section may be shortened or lengthened upon application by any party, upon a showing of good cause, as determined by the Board.

#### Section 5. NOTICE OF RESPONSE.

Not less than five (5) days prior to the hearing, the City may respond in writing, specifying the documentation upon which the actions by the City complained of were based, specifying the witnesses to be called, and presenting any other appropriate matter. Such response shall be served by first class mail or by personal service.

#### Section 6. SUPPLEMENTAL DOCUMENTS.

At any time before the matter is submitted for decision to the Board, any party may file with the Board, an amended or supplemental document in support of their respective positions by giving notice thereof to the other party. If the amended or supplemental document presents new charges or defenses, the other side shall be allowed a reasonable opportunity to prepare a response.

Section 7. DISCOVERY.

Not less than ten (10) days prior to the date upon which hearing has been set, any party, upon request is entitled to:

- (1) obtain the names and addresses of witnesses to the extent known to the other party, including but not limited to those intended to be called to testify at the hearing, and
- (2) inspect and make a copy of any of the following in the possession of custody or under the control of the other party:
  - (a) a statement of a person other than the respondent named in the initial pleading when it is claimed that this person's testimony forms a basis for the administrative proceeding,
  - (b) a statement pertaining to the subject matter of the proceeding made by any party to another party or person,
  - (c) statements of witnesses then proposed to be called by the party and of other persons having personal knowledge of the acts, or events which are the basis for the proceeding,
  - (d) all writings, including but not limited to official reports or files which the party proposes to offer in evidence,
  - (e) any other writing or thing which is relevant and which would be admissible in evidence.

For purposes of this section, "statements" includes written statements by the person, signed or otherwise authenticated, stenographic, mechanical, electrical, or other recordings or transcripts thereof, of oral statements by the person, and written reports or summaries of such oral statements. Nothing in this section shall authorize the inspection or copying of any writing

or thing which is privileged from disclosure by law or otherwise made confidential or protected as attorney's work product.

#### Section 8. SUBPOENAS.

Not later than five (5) days prior to the date set for such hearing, any party to a proceeding may request the issuance of subpoenas by the Board to compel the attendance of any witness in the matter then pending.

#### Section 9. REPRESENTATIVES.

Any party requesting a hearing before the Personnel Board of Review may appear to represent himself or herself, or may be represented by an attorney or any other person authorized by the applicant. Whether or not represented by another person, the aggrieved employee shall be present at the proceedings, unless excused by the Board.

#### Section 10. EVIDENCE; EXAMINATION OF WITNESSES.

- A. Oral evidence shall be taken only upon oath or affirmation.
- B. Each party shall have these rights:
  - . To call and examine witnesses;
  - . To introduce exhibits;
  - . To cross examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in direct examination;
  - . To impeach any witness regardless of which party first called that witness to testify;
  - . And to rebut the evidence against that person. If respondent does not testify in his or her own behalf, that person may be called and examined as if under cross examination.

- C. The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing and irrelevant or unduly repetitious evidence shall be excluded.
- D. Either party may request, at the time of filing a request for hearing or a response, that the proceedings be taken down by a court reporter. The party so requesting shall be responsible for such costs.
- E. A representative of the City Clerk's office shall be present to record or otherwise memorialize the proceedings.

#### Section 11. CONDUCT/DEPORTMENT OF PARTICIPANTS.

The chairperson of the Board shall be charged with the responsibility and authority to regulate the conduct and deportment of the participants in any hearing before the Board. Failure of participants or their representatives to comply with orders of the chairperson may be subject to sanctions, including postponement of hearing dates, temporary removal of such person from the hearing, or other appropriate sanctions or measures. Repeated misconduct or

willful failure by a party or that person's representative to abide by rulings of the chairperson, following appropriate warnings, may result in the entry of a default ruling.

Section 12. DECISION: FORM AND CONTENTS; DELIVERY OF COPIES  
TO PARTIES.

The decision of the Board shall be in writing and shall contain findings of fact, and a determination of the issues presented. Copies of the decision shall be delivered to the parties personally or sent to them by certified mail. Such decision shall be finalized within ten (10) days after the hearing, unless a different period is specified under an applicable Memorandum of Understanding. The decision shall be signed by all members of the Board who participated in the hearing and deliberations.

Section 13. DEFAULTS.

Any party who fails or neglects to appear at the hearing, at the specified date, time and location, may be the subject of a default finding. Such finding shall not relieve the City from the presentation of a prima facie showing, based on testimony or other evidence, with or without notice to the respondent, establishing the burden of proof necessary for action to be taken.

Section 14. JUDICIAL REVIEW.

Judicial review of any action by the Board may be had by filing in Superior Court, a Petition for Writ of Mandate in accordance with the provisions of Code of Civil Procedure addressing administrative mandamus. Such Petition shall be filed within thirty (30) days after the date of decision, except as otherwise provided by law or agreement



between the parties. The complete record of proceedings before the Board, or such parts thereof as are designated by the petitioner, shall be prepared by the City Clerk and/or the court reporter and shall be delivered to the petitioner within thirty (30) days after such request is made, upon payment of the fee specified in §69950 of the Government Code, as now exists or may be hereafter amended. Nothing in this section shall be deemed to create or give rise to any independent right to review by the courts or Personnel Board of Review not otherwise established by law or agreement.

#### Section 15. CONTEMPT.

The Board shall be authorized to initiate contempt proceedings in the Superior Court of San Joaquin County, by reporting the contemptuous act, or refusal to act of any person appearing before the Board. The grounds upon which such contempt citation may be sought are those upon which a contempt citation has heretofore been sustained in any California court of record. Upon an appropriate finding in the matter by the Court, such disobedience of the Board's order may then be punished by the Court as contempt.

#### Section 16. INDEPENDENT COUNSEL.

At the discretion of the Board, independent counsel may be retained to advise the Board on legal matters pertaining to any question then pending before the Board.

#### Section 17. PUBLIC ACCESS TO HEARINGS.

The Personnel Board shall have discretion as to whether all hearings conducted under these procedures shall be open or closed to the public, unless otherwise required by Memorandum of Understanding, or statute.

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